

Remarks

The Office Action mailed August 21, 2007, has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1 and 4-23 are now pending in this application. Claims 1, 8, and 16 have been amended in the forgoing amendment to better define the claimed embodiments. Claims 2 and 3 were previously cancelled.

In addition, and in accordance with 37 C.F.R. 1.136(a), a two month extension of time is submitted herewith to extend the due date of the response to the Office Action dated August 21, 2007, for the above-identified patent application from November 21, 2007, through and including January 22, 2007. In accordance with 37 C.F.R. 1.17(a)(2), authorization to charge a deposit account in the amount of \$460.00 to cover this extension of time request also is submitted herewith.

The rejection of Claims 1 and 4-23 under 35 U.S.C. § 103(a) as being unpatentable over Saito (EP 1 148 671) in view of Herz.

Claims 1 and 4-15

Claim 1, element (c), has been amended to replace “.... broadcasting the digital data file together with identification data for the requesting mobile unit....” With “...broadcasting the digital data file together with identification data identifying for the requesting mobile unit....”. Applicant submits that such amendment merely makes the wording of the claim more explicit and does not change the scope of the claim as the meaning of “identification data” was apparent from element (e) of the claim as examined.

Applicant has carefully reviewed Saito and respectfully submits that Saito does not actually disclose the elements identified by the Examiner in Paragraph 5 of the detailed action. With reference to Figures 1 and 14 of Saito, it will be understood that Saito discloses two methods for delivering music data to a mobile station 10, namely through a broadcast service via broadcast station 70, or through mobile data communications network 20, depending on whether the requested song is a “popular” song or not. In the case of popular songs, the music data for popular songs is circularly broadcast in an encrypted state on a broadcast channel “mch1” by the

broadcast station 70 (See Saito para 0021). When the delivery manager server 60 gets a request from a mobile device 10 through the mobile data communication network 20 for a popular song, it sends the mobile device 10 a decryption key through the mobile data communication network 20 (see Fig 14. Sc2-Sc3) which the mobile device 10 can then use to decrypt the popular song as it is circularly broadcast in an encrypted state on a broadcast channel “mch1” by the broadcast station 70. In the case of a song that is not popular, when the delivery manager server 60 gets a request from a mobile device 10 through the mobile data communication network 20 for a song that is not popular, it transmits to the mobile device 10 a decryption key together with the music data through the mobile data communication network 20 (see Fig 14. Sc2-Sc4).

Thus, it will be appreciated in Saito that the only song data that is sent over the broadcast channel is for circularly broadcast popular songs that are not addressed to any particular mobile station, and further these popular songs are not sent out over the broadcast in response to a particular request by a mobile station. For not-popular songs, the song data is sent out addressed to a specific requesting mobile station over the mobile data communications network 20, not the broadcast network.

Accordingly, contrary to what is indicated by the Examiner in Paragraph 5 of the Detailed Action, Saito does not in fact show “(c) broadcasting the digital data file together with identification data identifying the requesting mobile unit over a download channel on a broadcast network that has a plurality of broadcast channels and an overlapping coverage area with the bi-directional wireless network”. As noted above, the only song data that is broadcast over a broadcast channel in Saito is for the circularly broadcast popular songs that are not addressed to any mobile station in particular, and thus in Saito the broadcast song data does not include identification data identifying the requesting mobile unit. In Saito, any songs that are addressed to a specific mobile station are sent over the mobile data communication network.

In at least some circumstances, the download channel in a broadcast network will over high speed and/or lower cost delivery of data to a mobile station than a 2-way mobile data communications network. In such circumstances, the method of claim 1 offers an advantage in that a channel in the broadcast network is used to send songs that are specifically addressed for a requesting mobile device in contrast to Saito where songs that are addressed to a specific mobile device will be sent through the slower speed and/or higher cost mobile data communication network.

Herz also does not disclose “(c) broadcasting the digital data file together with identification data identifying the requesting mobile unit over a download channel on a broadcast network that has a plurality of broadcast channels and an overlapping coverage area with the bi-directional wireless network”. Accordingly, all of the elements of claim 1 are not found in the cited references Saito and Herz even if the references are combined. Furthermore, Saito specifically teaches away from the method of claim 1 by teaching a system in which the song data sent in the broadcast channel is circularly broadcast without identifying data for receiving mobile devices, and in which song data that does include identifying data for receiving mobile devices is transmitted in the 2-way mobile data communication network. Thus, there is no motivation to combine and alter the cited references to arrive at the subject matter of claim 1.

Accordingly, the subject matter of claim 1 is patentable over the cited references, and claims 4-15 that depend from claim 1 are patentable over the cited references for the same reasons as claim 1. Furthermore, the dependent claims add additional patentable features.

For example, dependent claims 4, 5 and 6 collectively add the following: prior to step (a), a step of broadcasting on the at least one other broadcast channel a prompt to encourage users of the mobile units to submit data requests for the digital data file to the bi-directional wireless network, wherein the prompt includes information encouraging the users of the mobile units to contact a specified address associated with the bi-directional wireless network to request the digital data file, and the bi-directional wireless network is a cellular network and the specified address is a telephone number.

The Examiner has indicated that Saito shows such features, however Applicant respectfully submits that Saito discloses using an HTML-style interface for interactions between the mobile station and the deliver management system (See Saito para 0075). Neither Saito or the other references disclose or suggest that mobile unit users be prompted with a telephone number to call to request a song download as required by claim 6.

Similarly, claim 8 as amended specifies that he prompt that is broadcast includes information causing a real-time aural message that identifies a telephone number over a speaker at receiving mobile units and in step (b) the telephone number is used as identifying information to associate the data request with the digital data file. Such a feature is neither shown in or suggested by the cited references.

Claims 16 and 17

Independent claim 16 has been amended to clarify that the mobile unit processor is configured for monitoring the broadcast network through the first broadcast receiver system for transmission of a music data file that is addressed to the mobile unit and , upon detecting the music data file that is addressed to mobile unit, receiving and storing the data file in the storage while at the same time receiving the real time broadcast transmission from the broadcast network through the first broadcast network. This clarifying amendment is supported by the application as originally filed, including at para 0034.

As discussed above in respect of claim 1, Saito does not disclose a system in which music data addressed to a specific mobile unit is sent through a broadcast channel. In Saito, any data that is specifically addressed to a specific mobile unit (e.g. songs that are not popular) is sent through the bi-directional data communication network. Thus, among other things, Saito does not disclose a mobile unit having a processor connected to the communications systems, the storage and the user output device for (i) sending a request for a playable media file through the bi-directional communications system to the wireless bi-directional communications network, the request including information identifying the mobile unit, and (ii) monitoring the broadcast network through the first broadcast receiver system for transmission of a music data file that is addressed to the mobile unit and , upon detecting the a music data file that is addressed to mobile unit receiving and storing the data file in the storage.

Herz also does not disclose such a feature. Accordingly, all of the elements of claim 16 are not found in the cited references Saito and Herz even if the references are combined. Furthermore, Saito specifically teaches away from the device of claim 16 by teaching a system in which the song data sent in the broadcast channel is circularly broadcast without identifying data for receiving mobile devices, and in which song data that does include identifying data for receiving mobile devices is transmitted in the 2-way mobile data communication network. Thus, there is no motivation to combine and alter the cited references to arrive at the subject matter of claim 16.

Claim 17 which depends from claim 16 is patentable for at least the same reasons as claim 16.

Claims 18-23

With respect to independent claim 18, applicant respectfully submits that the elements shown by Saito have been incorrectly identified in the Office Action. In particular, page 6 of the Office Action states that the feature of “(b) storing at the subscriber unit usage information about use by the subscriber unit of the wireless network” are shown in Saito at “pars [35], [37], [40], discussing billing data is stored in a storage unit, counting table storing unit for storing number of delivery operation, this includes log data, information of delivery operation of songs”

Applicant notes that in fact each of the paragraphs of Saito cited against element (b) of claim 18 are in fact performed at the Deliver Management Server 60 of Saito, not at the actual mobile station 10. By contrast, in element (b) of the method of claim 18, the subscriber usage information is actually stored at the wireless subscriber unit. This allows the usage information to be tracked efficiently at mobile station and periodically transmitted to a central tracking location.

Accordingly, applicant respectfully submits that each of the elements of method claim 18 are not disclosed in the cited references Saito and Herz, and further more it would not be obvious to combine and modify Saito and Herz to arrive at the claimed method.

Claims 19-23 which depend from claim 18 are patentable for similar reasons as claim 18, and also add further patentable features.

For example, claim 21 specifies that the bi-directional wireless communications network includes a plurality of base units connected to a coordinating hub, the base units having associated coverage areas for communicating with the subscriber unit as it moves through a coverage area of the bi-directional wireless communications network, the bi-directional wireless communications network including a dedicated control channel through which network administration information is substantially continuously communicated between the subscriber unit and the bi-directional wireless communications network, wherein in step (c) the stored usage information is transmitted through the dedicated control channel. Such a feature is not disclosed in or suggested by paragraphs cited in the Detailed Action or elsewhere in the cited references.

Claim 23 adds the further feature that the usage information includes identification of channels audited by the subscriber unit and the time periods during which the identified channels

were audited. The cited references do not disclose or suggest storing such information at the mobile subscriber unit and then transmitting such information. Herz may show storing information about channels that are saved by the device so that those channels can be identified by a user who wants to listen to them at a future time. However, Herz does not disclose actually storing identification of channels audited by the subscriber unit and the time periods during which the identified channels were audited. Such information allows information about channels that are actually being listened to by a user to be collected and transmitted back to a central usage tracking location.

For at least the reasons stated above, Applicant respectfully requests that the Section 103 rejections of Claims 1 and 4-23 be withdrawn.

In view of the foregoing amendment and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully submitted,



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